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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3011 of 1996

with

SPECIAL CIVIL APPLICATION No 1308 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CRANE OWNERS ASSOCIATION

Versus

UNION OF INDIA DELETED

Appearance:

1. Special Civil Application No. 3011 of 1996
MR PRASHANT G DESAI for Petitioners
Mr.S.N.Shelat, Addl. Advocate General with
Mr.A.J.Desai, AGP for respondent nos.2,3,4
MS URVI A VORA for Respondent No. 5,13,14,15
MR PRANAV G DESAI for Respondent No. 7

2. Special Civil ApplicationNo 1308 of 2000
MR H.H.Mehta, Sr. Counsel with B.G.Jani, for Petitioners
Mr.S.N.Shelat, Addl. Advocate General with

Mr.A.J.Desai, AGP for respondent nos.2,3,4
MS URVI A VORA for Respondent No. 5,13,14,15
MR PRANAV G DESAI for Respondent No. 7

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 14/08/2000

CAV JUDGEMENT (Per D.M.Dharmadhikari, CJ)

This is a petition by the owners of cranes individually and through their Association. The petitioners call in question certain provisions of the Bombay Motor Vehicles Tax Act, 1958 as amended from to time to time and particularly the amendment introduced to it by the Gujarat Act No. 13 of 1995 published in Gujarat Government Gazette Extra Ordinary dated 31.7.1995 and the notification issued thereunder published in Gujarat Govrnment Gazette Extra Ordinary dated 31.7.1995 whereby tax at increased rates have been imposed on mobile cranes mounted on motor vehicles.

2. Bombay Motor Vehicles Act, 1958 (hereinafter referred to as "the Act of 1958") by its charging section 3 empowers the State Government to impose the tax on motor vehicles by notification in the Official Gazette but at a rate not exceeding the maximum rates specified in its Schedule appended to the Act. The Schedules appended to the Act were amended from time to time to specify the maximum rates of tax which could be levied on different types of motor vehicles including cranes. By impugned part of Gujarat Amendment Act No.13 of 1995, the Ist Schedule to the Act of 1958, particularly, clause VI was amended to insert the additional entry (f), sub-entries (i) & (ii) for prescribing the maximum rate of tax imposable on cranes.

3. The relevant entry (f) in clause VI in the Ist Schedule in Part I of Act of 1958 containing the maximum rates of tax imposable on cranes which is under challenge in thi s petition needs to be quoted as under:-

Ist Schedule

Clause VI entry (f) Motor Vehicles other than those liable to tax under the foregoing provisions of the Schedule -

a. ...
b. ...
c. ...
d. ...
e. ...
f. (i) Tractors which are not fitted Rs. 1500/-
with any equipments such as +Rs. 200/- for
rigs, cranes, compressors or entry additional
projectors exceedings 2250 250 kgs. or part
kgs. in weight.

(ii) Any motor vehicle exceeding 2200 "
kgs in weight, unladen which are
not intended to carry any passenger,
goods or other load, and which are
fitted in any equipment such as
rigs, cranes, compressors or
projectors and are used for any
special services or purposes.

4. In accordance with Section 3, its Ist Schedule as amended above prescribes maximum imposable rate of tax on motor vehicles such as cranes. The impugned notification published in Gujarat Government Gazette Extra-ordinary dated 31.7.1995 prescribes the rates of tax, within the maximum permissible limit, on various kinds of motor vehicles including cranes. The relevant part of the said impugned notification concerning cranes reads as under:-

IV. Motor Vehicles other than those liable tax under
the foregoing rovisions of this Schedule. -

(i) Owned by an individual, a local
authority, a public trust, a Uni-
versity, or an education or social
welfare institution -

(a) Vehicles exceeding 220 kg. in weight
unladen, in which the total number of Rs.540
seats (including that of the driver)
and of the standing persons permitted
to be carried in accordance with the
Conditions of permit granted to the owner
of the vehicle does not exceed twenty.

(b) Vehicle exceeding 2250 kg. in weight,
unladen, in which the total number of Rs.540
seats (including that of the driver) plus each
and of the standing persons permitted such num-
to be carried in accordance with the ber in ex-
Conditions of permit granted to the cess of

owner of the vehicle does not exceeds twenty.	twenty.	
(c) (i) Tractor whether or not fitted with any equipment such as rigs, cranes, compressors or projectors or part thereof, exceeding 2250 kgs. in weight, unladen	Rs.540/- plus Rs.100 for every additionl 250 kg in in excess of 2250 kg	
(ii) any motor vehicles exceeding 2250 kg. in weight, unladen which are not intended to carry any passenger, goods or other load, and which are fitted with equipment such as rigs, cranes, compressors or projector, and are used for any special services or purposes.		
(iii) Owned by a person other than an individual, a local autho- rity, a public trust, a Uni- versity, or an educational or social welfare institution.	Twice the rates specified above.	

Additional tax payable in respect of motor vehicles used for drawing trailors -

(i) for each trailor when the trailor is used for the carriage of goods.	The rates specified in clause in respect of motor vehicles used for the carriage of goods or materials.	
(ii) for each trailor when the trailor is used for the carriage of passengers	The rates specified in clause-II in respect of motor vehicles playing for hire and used for the carriage of passengers.	
for each trailor when the trailor is used for any other purpose.	Rs. 50:	

Provided that two or more vehicles shall not be chargeable under this clause in respect of same trailor.

VI. Motor Vehicles falling under Twice the rates

clause II or clause IV manu- specified in
factured out of India and clause II or as
imported into India after the the case may be
31st March, 1957. clause IV.

Explanation - I. For the purpose of Clause IV, -

(1) "educational institution" shall mean such educational institution as is recognised by the State Government by order notified in the Official Gazette in this behalf;

(2) "local authority" shall mean any Municipal Corporation, Municipality Cantonment Board or Panchayat constituted under any law for the time, being in force in the State of Gujarat;

(3) "Public trust" shall mean a public trust registered under the Bombay Public Trust Act, 1950 (XXIX of 1950) as in force in the State of Gujarat;

(4) "Social Welfare Institution" shall mean any institution engaged in any activity conductive to the welfare of the general public and recognised by the State Government by order notified in the Official Gazette for the purpose of those clause;

(5) "University" shall mean a university established by or under any law for the time being in force in the State of Gujarat.

Explanation - II - If a motor vehicles is jointly owned by more person than one, then not with standing anything contained in the proviso to sub-section (1) of section 41 of the Motor Vehicles Act, 1988, such Motor Vehicles shall for purposes of clause IV, be deemed to be owned by a person other than an individual."

5. The leading arguments were advanced by Shri H.M.Mehta, Senior Counsel on behalf of the crane owners and they were supported by the arguments advanced by Shri Pranav G Desai.

6. The principal submissions made on behalf of the petitioner is that mobile cranes mounted on motor vehicles may be covered by the definition of the `Motor Vehicles' under the Act of 1958 read with definition clause 28 in Section 2 of the Motor Vehicles Act, 1988 but as the mounted mobile cranes are principally meant for use at certain sites and only incidentally used on

roads for transport of cranes, they cannot be subjected to tax on such incidental user under Section 3 of the Act of 1958. Very heavy reliance is placed on the decision of the Supreme Court in the case of Bolani Ores Vs. State of Orissa reported in 1975 SC 17 and in the case of Goodyear India Ltd. Vs. Union of India & Otrs reported in AIR 1997 SC 2038.

7. On the question of taxability of mobile mounted cranes, Shri S.N.Shelat, Additional Advocate General in his reply brought to the notice of this Court a series of decisions of the Supreme Court emanating from several motor vehicle taxation laws of different states. His submission is that cranes which may be incidently used on roads can be subjected to tax and the question of its taxability is conclusively answered by the Supreme Court against the crane owners. Reliance is placed on the decisions of the Supreme Court on Punjab Motor Vehicle Taxation Act in the case of Union of India and Ors Vs. Chowgule & Co. Pvt.Ltd. reported in AIR 1992 SC 1376 and in the case of Regional Transport Officer-Cum-Taxing Authority, Rourkela and Ors. Vs. Steel Authority of India Ltd. reported in 1995 Supp(4) SCC 165. Reliance is also placed on the decision of the High Court in the case of M/s.Ishwardas & Co. & Ors. Vs. State of Maharashtra & Anr. reported in AIR 1986 Bombay 348 and in the case of Poomani V. Tuticorin Thermal Power Project reported in AIR 1990 Madras 372. Learned Additional Advocate General tried to distinguish the decisions of the Supreme Court in the case of Bolani Ores (Supra) and Goodyear India Ltd. (Supra).

8. To consider the challenge made by the crane owners to the taxability of mobile mounted cranes, a few [provisions of the Act of 1958 as amended and the rules framed thereunder, in the light of the decisions of the Supreme Court and High Courts cited at the Bar are required to be considered.

9. Bombay Motor Vehicles Tax Act of 1985 as adapted and modified by the Gujarat Adaption of Laws Act, 1970 and as amended from time to time, as its preamble declares is `a law relating to the taxation of motor vehicles.' The words "motor vehicle" has not been separately defined in the Act of 1958 but Sub-Section 10 of Section 2 of the said Act provides that "other words and expressions used, but not defined in this Act shall have a meaning respectively assigned to them in the Motor Vehicles Act of 1937, By Gujarat Act No.10 of 1991. Sub-section 10 of the Act of 1958 is amended to substitute for words and figures "the Motor Vehicles Act

of 1939," "Motor Vehicles Act of 1988." Under section 2(28) of Motor Vehicles Act of 1988 the motor vehicle is defined as under:-

Section 2(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed Premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimetres".

The charging Section 3(1) & (2) of the Act of 1958 reads thus:-

"3.(1) Subject to the other provisions of this Act, on and from the 1st day of April, 1958, there shall be levied and collected on all motor vehicles used or kept for use in the State, a tax at the rates fixed by the State Government by notification in the Official Gazette, [but not exceeding the maximum rates specified in the First, Second and Third Schedules]:

[Provided that in case of any motor vehicles (irrespective of whether they are specified [in section 3 A or the First Schedule] or the Second Schedule) kept by a dealer in, or manufacturer of such vehicles, for the purpose of trade, there shall be levied and collected annually such amount of tax not exceeding Rs.250/- as the State Government may, by notification in the Official Gazette specify on those motor vehicles only which are permitted to be used on the roads in the manner prescribed by rules made under [the Motor Vehicles Act, 1988]:

Provided further that, if the State Government, because of disparity in the

rates of tax prevailing in certain area of the State immediately before the commencement of this act or for any other reason, is of opinion, that the levy and collection of tax on motor vehicles immediatley at a uniform rate throughout the State, is likely to cause undue hardship to owners or persons having possession or control of such vehicles in those area, or to affect adversely trade and commerce or the development of motor transport and other industries in such area, the State Government may levy and collect the tax on motor vehicles, or any class thereof at different rates in those areas, so however that by increase or decrease of the rate, of tax annually in those area, within a period of three years, a unifrom rate of tax is levied throughout the State.

3.(2) Except during any period for which the Taxation Authority has, in the prescribed manner, certified that a motor vehicle was not used or kept for use in the State, the registered owner, or any person having possession or control, of a motor vehicle of which the certificate of registration is current, shall, for the purpose of this Act, be deemed to use or keep such vehicle for use in the State."

What is to be noted that by charging Section 3(1) the taxes are leviable and recoverable on all motor vehicles actually put to use or kept for use within the State.

10. Section 3(2) makes it clear that a motor vehicle neither used nor kept for use in the State is not liable to pay tax if for the period in question it has obtained a certificate from the Taxation Authority that it was not so used and not kept for use in the State.

11. Learned Counsel appearing on behalf of the petitioners does not dispute the legal position that mobile cranes mounted on motor vehicles are included in the definition of `motor vehicle' under Section 2(28) of the Motor Vehicles Act, 1988. The said definition has been borrowed for the purpose of the Act of 1958.

12. The contention advanced on behalf of the

petitioners is that the cranes even mounted on motor vehicles to make it mobile are principally and mostly used at different work sites or construction sites and they are sometimes incidentally used on public roads only to carry the cranes from one site to another. It is therefore contended that the cranes are not used or kept for use in the State within the meaning of that expression under Section 3(1) of the Act of 1958 and therefore no tax can be levied on the same.

13. The other submission made on behalf of the petitioner is that most of the cranes which are used exclusively in enclosed premises of a factory or a work site and not at all used on public roads are also subjected to tax and to that extent the provisions of Section 3(1) fall outside entry no.57 of List II of the VIIth Schedule to the Constitution. The State Legislature therefore in specifying in the Schedule to the Act of 1958, maximum rates of tax on all cranes irrespective of its use on public roads has acted beyond its legislative competence under entry no.57 of List II of VIIth Schedule. Entry No.57 of List II of VIIth Schedule reads as under:-

> "Taxes on Vehicles, whether mechanically propelled or not, suitable for use on roads including trams, cars subject to the provisions of entry no.35 of List III."

Entry No.35 of List III of the concurrent list empowers the State or the Central Legislature to make law for laying down general principles on which tax can be imposed on mechanically propelled vehicles. Entry no.35 of list III reads as under:-

> "Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."

14. On behalf of the petitioners, very heavy reliance has been placed on the decision of the Supreme Court in the case of Bolani Ores (Supra) and Goodyear India Ltd. (Supra). So far as the taxability of mobile mounted cranes included in the definition of motor vehicles, is concerned this Court finds that the point is concluded against the petitioners by the decision of the Supreme court in the case of Travancore Co. Ltd. Vs. State of Kerala & Ors. reported in AIR, 1980 SC 1547 and many later decisions of the Supreme Court to which we shall make a reference in the following paragraphs of this judgement.

15. In the case of Travancore Co. (Supra), the earlier decision of the Supreme Court in Bolani Ores (Supra) was considered in detail. The Bolani Ores case was distinguished on definition clause of Motor Vehicles contained in Section 2(18) of the Motor Vehicles Act, 1938, as it existed then, prior to its amendment in the year 1956. In the case of Bolani Ores (Supra), the question raised was regarding taxability of motor vehicles, i.e. dumpers, tractors, caterpillar trax cavetror and caterpillar Bull-dozers, scrapers and shovels etc. which are all used in the premises of a mine. In the definition of `motor vehicle' contained in Section 2(18) as it stood at the relevant time, prior to its amendment by the Act of 1956, vehicles used solely upon the premises of the owner were excluded from the definition of motor vehicle. It is only after the amendment of definition clause in Section 2(18) by the Act No. 100 of 1956 that only vehicles of a special type adapted for use only in a factory or in any other enclosed premises were excluded from the definition of motor vehicle. The Bihar, Orissa and Mysore Motor Vehicles Taxation Acts in their provisions have incorporated the definition of motor vehicles contained in the Motor Vehicles Act of 1938. The legal question of interpretation that arose before the Supreme Court in the case of Bolani Ores (Supra) was whether definition of `motor vehicle' contained in amended definition of Section 2(18) would be applicable to demand tax on vehicles involved under the Motor Vehicle Taxation Acts of 3 different states. The second question arose was whether it is an instance of legislation by reference or incorporation. In Bolani Ores Case after discussing the provisions and interpreting them, conclusion was arrived at that the taxing provisions had to be interpreted in the light of entry no.57 in List II of VIIth Schedule of the constitution. Motor Vehicle Tax is imposable on motor vehicles to be used on roads or intended to be used on roads. It was held that the State Legislature would be deemed to have incorporated in their taxing provision the deinition of `motor vehicle' as contained in Section 2(18) of the Motor Vehicles Act as it stood prior to the amendmen introduced to the definition clause by the Act of 100/92. Thus construing the provisions of the Acts of the State Legislature, it was held that vehicles used in the the mining premises fall outside the definition of `motor vehicle' and could not be subjected to tax.

16. This distinction was duly noted by the Supreme Court in the case of Travancore Tea Co. Ltd (Supra) where also the question that arose was regarding

taxability of motor vehicles used within the Tea Estate of the owner. In Travancore Tea Co. Ltd. case (Supra), the Supreme Court declined to rely on the decision of Bolani Ores (Supra) by bringing out the distinction discussed above . It was held that as the Kerala Motor Vehicle Taxation Act, 1963 refers and incorporates in its provisions the amended definition of `motor vehicle' contained in Section 2(18) of the Motor Vehicles Act, 1939 as introduced by Act No.100 of 1956, vehicles which though used in enclosed premises of the Tea Estate are exigible to tax because they are covered by the definition clause in Section 2(18) of the Act, 1939 as amended in the year 1956. Those were vehicles not being of a special type adapted for use only in a factory or any other enclosed premises. They were held to be not exempt from tax as such vehicles are not excluded from the definition of `Motor Vehicle'. In Travancore Tea Co. Case (Supra), the vehicles owned by the owner were tractors, trailors, lorries etc. which were used in the Tea Estate but were held to be `motor vehicles' not of a `special type adapted for use exclusively in a factory or enclosed premises.'

17. For the aforesaid reasons, the decision of the Supreme Court in Bolani Ores (Supra) which was based on the unamended definition of Section 2(18) of the Motor Vehicles Act, 1939 (as existing then), is no assistance to the petitioners in the cases in hand based on the provisions of the Bombay Act as applicable to the State of Gujarat.

18. As has been stated above, Section 2(10) as amended by the Gujarat Act No. 10 of 1991 adopts the definition of motor Vehicle contained in the New Motor Vehicle Act, 1988. Under the New Motor Vehicles Act of 1988 by Section 2(28) `vehicles' adapted for use on roads and not of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than 4 wheels fitted with engine capacity of not exceeding 25 cubic cms are all included in the definition of `motor vehicles'.

19. It cannot be disputed from the common knowledge and explained from various technical dictionaries and diagrams placed before us that "mobile crane mounted on motor vehicle is so manufactured and designed as to become a vehicle "adapted for use on roads". It is also not disputed that mounted cranes are principally used at work sites or in enclosed premises for lifting or moving goods of heavy weights and loading & unloading. Mounted crane on a motor vehicle is capable of being used on the

roads as it is required to be sometimes taken from one work site to another. It is a motor vehicle adapted for use upon roads - may be that it is not frequently or regularly used on roads. This Court also cannot accept the proposition that mounted crane is a vehicle of special type adapted for use only in factories or in any other enclosed premises. A mobile mounted crane is capable of being used on roads for its transportation. It is, therefore, not a vehicle of a special type for exclusive use inside the factory or enclosed premises. Its exigibility to tax therefore as a `motor vehicle' cannot be questioned and the point is squarely answered against the crane owners in the case of Travancore Tea Co. Ltd. (Supra).

20. Very strong reliance has been placed on the decision of Goodyear India Ltd. (Supra) on behalf of the petitioner by stating that the same being the latest pronouncement of the Supreme Court is binding on this court in preference to all other earlier decisions of the Supreme Court with which we shall briefly deal in the following paragraphs.

21. Goodyear India Ltd case (Supra) was not a case arising from any motor vehicle taxation law. It was the case on the question of payment of excise duty under Central Excise Law on tyres. There excisable item no.16 with its several sub-items in the Central Excise Tariff, as compared to item no.34 on a motor vehicle, came up for consideration and construction. Tyres of motor vehicles mentioned in item no.16 were subjected to excise duty at the rate of 60% advalorem while all other tyres not for motor vehicles were leviable to duty at the rate of 20% advalorem. The direct question that arose before the Supreme Court was whether tyres of Dumpers and Earth-rollers were subjected to excise duty as "Tyres for motor vehicles" under item no.16 sub item no.1 at 60% advalorem or they are taxable, as claimed by the manufacturer, under sub-item no.3 of item no.16 as other tyres at the rate of 20% advalorem. It is on this question that item no.34 of the tariff which contains the description and definition of `motor vehicle' for the purpose of excise duty, came up for consideration. What is to be noticed is the striking difference between the definition of `motor vehicle' in item no.34 with the explanation thereunder and the definition of `motor vehicle' contained in Section 2(28) of Motor Vehicles Act, 1988, as the latter alone is relevant for the purposes of these cases. The two definitions contained in excise law in item no.34 and in Act of 1988 are hereby reproduced in juxtaposition for highlighting the

differences between the two:-

Item No.34 - Motor Vehicles

Item No.	Tariff Description	Rate of Duty
34.	Motor Vehicles--	
	"Motor Vehicles" means all mechanically propelled vehicles adapted for use upon roads, and includes a chasis and a trailer, but does not include a vehicle, running upon fixed rails --	
1.	Auto-cycles, motor-cycles, scooters, auto-rickshaws and any other three wheeled motor vehicles.	10% ad valorem
2.	Motor vehicles of not more than 16 HP by Royal Automobile Club (RAC) rating.	25% ad valorem
3.	Motor cars of more than 16 HP by Royal Automobile Club (RAC) rating constructed or adapted to carry not more than 9 persons.	40% ad valorem
3.A.	Tractors, including agricultural tractors.	15% ad valorem
4.	Motor vehicles, not otherwise specified.	15% ad valorem
	Explanation - for the purpose of this item, where a motor vehicles is mounted, fitted or fixed with any weight lifting, earth moving and similar specialised material handling equipment, then such equipment, other than the chassis, shall not be taken into account.	

Section 2(28) of the Motor Vehicle Act of 1988 "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes

a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed Premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimetres". (underlining by us)

A comparative study of the definition contained in item no.34 in the Central Excise Act and Section 2(28) of the Motor Vehicle Act, 1988 brings out the distinction between the two definitions which is highlighted in the underlined portions of the definitions quoted above. A mechanically propelled vehicle adapted for use upon roads alone is `motor vehicle' for the Excise Law. Compared with the same, under Section 2(28) of the Act of 1988, all vehicles adapted for use upon roads and if they are not vehicles of a special type adapted for use only in a factory or in any other enclosed premises are all motor vehicles. In Goodyear India Case Ltd. (Supra) construing the definition in item no.34 of Motor Vehicle the expression "adapted for use upon roads" was interpreted. It was observed:

"Merely because the areas on which such heavy movers traverse might sometime include roads also is not enough to hold that they were adapted to be used upon roads. Such use of the heavy movers or the road may only be ancillary or incidental to the main use of it. Emphasis in the definition must be on the words "used upon roads", those words would denote the principle or dominant user and not where it may move incidentally."

The above portion of the judgement in Good Year India Co. Ltd. and the observations quoted above have been heavily relied behalf of the petitioners.

22. As we have pointed out above the definition of `Motor Vehicle' in item no.34 is in material parts different from the definition of `motor vehicle' in Section 2(28) of the Act of 1988. The use of expression "vehicle adapted for use upon roads" is common in both the definitions but the last part of the definition in Section 2(28) to exclude `vehicles of special types adapted for use only in factory or in any other enclosed premises', is not to be found as part of the definition in item no.34 of the Excise Tariff.

23. The decision in Bolani Ores (Supra) of the Supreme Court, as has been discussed above, was considered, discussed and distinguished in Travancore Tea Co. Ltd. Case (Supra) which we have already dealt with in detail above.

24. Bolani Ores Case (Supra) came for consideration in several decisions of the Supreme Court in context of the Motor Vehicle Taxation Law which is the subject in hand. In M/s. Central Coal Fields Ltd. Vs. State of Orissa reported in AIR 1992 SC 1371, which arose from Orissa Motor Vehicle Taxation Act, the Dumpers and Walkers mostly used in the mining premises of the Central Coalfields Ltd. were subject for demand of motor vehicle tax on their use. It was observed that dumper and walkers;

> "by the use of rubber tyres are adapted for use on roads which means that they are suitable for being used on public roads. The mere fact that they are required at the plant to run at a particular speed is not to detract from the position otherwise that they are adapted for use on roads. The very nature of these vehicles make it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the dumpers or walkers as suggested are heavy and cannot be moved on the roads without damaging them is not to say that they are not suitable for use on roads."

The word "adapted" in the provision was read as `suitable' in Bolani Ores case by interpretation placed on the language used in entry 57 list II of the Constitution.

25. From the observations quoted above, the Supreme Court in deciding upon the taxability of motor vehicle, which undisputedly the mounted mobile cranes are, attached due importance to the definition clause contained in Section 2(28) and held that vehicles with wheels and tyres which can run on public roads are `motor vehicles' exigible to tax because "they are not manufactured or adapted for use only in factory or enclosed premises" to fall in the exception clause of the definition of `motor vehicle' in Section 2(28) of the Act of 1988. The decision of M/s. Central Coalfields Ltd. was followed in Union of India Vs. Chowgule and Co.Pvt.Ltd. reported in AIR 1992 SC 1376. In the case

of Chowgule & Co.Pvt.Ltd, `Bolani Ores Case' (Supra) was distinguished as being based on the unamended definition of `Motor Vehicle' in Section 2(18). The two decisions of the Supreme Court in the case of Central Coalfields Ltd. (Supra) and in the case of Chowgule & Co. (Supra) were reconsidered and reiterated by the Supreme Court in the case of Chief General Manager, Jagannath area Vs. State of Orissa, 1996 reported in Vol. 10 SCC 676 in which again Bolani Ores case was distinguished on the unamended definition clause existing then. It held that dumpers and walkers which are suitable for use on roads and not manufactured to give it a special type or design to be used exclusively in factory or in enclosed premises are exigible to tax under the Orissa Motor Vehicle Taxation Act.

In the case of Chief General Manager, Jagannath area (Supra), it as observed thus:-

"It would not be right to say that the tax collected is not compensatory in nature because the precise or specific amount collected is not actually used in providing any facilities. If a statute fixes a charge for a convenience or service provided by the State or an agency of the State and impose it upon those who choose to avail themselves of the service or convenience or who can use the services provided for, the imposition assumes a character of remuneration or compensation charged in respect of an advantage sought or received or advantage which can be received. The mere fact that any particular individual who can take advantage or the convenience of the services provided by the State but for some reason or other chooses not to enjoy the services provided cannot escape the taxing liability on that score nor can the provision invoked in the tax become invalid on that count. Such levy or tax on a motor vehicle for use of public roads or which is capable for being used on public roads are no doubt but compensatory taxes but do not violate provisions of Article 301 of the Constitution of India."

What is to be understood from the above observations is that tax is levied and collected not only for actual use of the roads but also for likely use and availability of roads to all kinds of vehicles which are capable of being used on roads.

26. In the light of the consistent view taken by the

Supreme Court in series of decisions based on the provisions in Motor Vehicle Taxation Laws of various states and the distinction that we have noted in the definitions of motor vehicle in the Excise Law and the Motor Vehicles Laws, we are not persuaded to prefer for reliance the view expressed by the Supreme Court in Goodyear India Ltd. (Supra) which turns on the definition of Motor Vehicle under item no.34 read with item no.16 of the Central Excise Tariff. In our considered opinion, the decisions of the Supreme Court directly on the point of taxation of motor vehicles of the kind - such as suitable for use on roads but not predominantly used on roads, in the case of Travancore Tea Co. Ltd.(Supra), Central Coalfields Ltd (Supra), Chowgule & Co. Pvt.Ltd. (Supra) and Chief General Manager, Jagannath Area (Supra) are preferable and binding on this Court.

27. In Goodyear India Ltd (Supra), the case of Dunlop India Ltd. (Supra) was relied. In the cases of Dunlop India Ltd. and Good Year India Ltd. (Supra) which are under the Central Excise Act, the earlier decisions of the Supreme Court in Central Coalfields, Chowgule & Co.Pvt. Ltd. and Chief General Manager, Jagannath area (Supra) were neither noticed nor they came up for consideration. In our view therefore, the petitioners can seek no assistance from decisions concerning Central Excise Law in Dunlop India Ltd. and Goodyear India Ltd (Supra). In our opinion, the decisions of the Supreme Court on Motor Vehicle Taxation Laws in Central Coalfields Ltd., Chowgule & Co. Pvt.Ltd. and the Chief General Manager, Jagannath Area (Supra) conclude the point on the taxability of mounted mobile cranes, against the petitioners.

28. The next ground urged is of discrmination and denial of equality in alleged violation of Article 14 of the Constitution in the matter of imposing burden of tax differently qua different types of vehicles and the owners thereof. It is submitted on behalf of the crane owners that tax under the Act is of a regulatory and compensatory nature. It is collected on motor vehicles for construction and/or maintenance of the roads as also for regulation of traffic. It is argued that imposition of tax at various rates on different kinds of vehicles therefore should have nexus or correlation with the extent of use of roads by a particular type of vehicle. It is argued that cranes are mainly used at work sites and are only incidentally used on the roads. The imposition of tax on cranes at the highest rate is therefore highly unreasonable compared to the tax levied

and collected from other heavy motor vehicles like trucks and buses which frequently use the roads. On this very aspect, it is further argued that much higher rate of tax imposed on mobile cranes, compared to other motor vehicles like trucks and buses is highly irrational. It is pointed out that under the impugned notification higher and higher rate of tax is imposable on crane depending upon its unladen weight and irrespective of whether it is actually used or not on the roads during the relevant month, quarter or year. It is next contended that it is highly arbitrary and irrational to impose tax on cranes manufactured out of India at double the rate than the cranes manufactured in India. It has been averred in the petition that most of the cranes manufactured out of India are purchased by the ordinary crane owners in military disposals. Such foreign manufactured cranes are second hand cranes and there is no justification to impose tax on them at the rate double the rate fixed for cranes made in India.

29. Finally, it is argued that in the absence of any correlation between the type of vehicle and its use on the roads, the rate of tax fixed for different kinds of vehicles owned by different kinds of persons is perse discriminatory and therefore violative of Article 14 of the Constitution. It is pointed out that no apparent justification has been shown to impose higher rate of tax on vehicles owned by partnership concerns or companies. Such unequal burden of tax on motor vehicle and mobile cranes depending upon the nature of its ownership has no nexus with imposition of tax under the Act for use of public roads. It is pointed out that under the provisions of the Act of 1988 and the Gujarat Motor Vehicles Rules framed thereunder, mobile cranes being designed and constructed for operations at work sites have been treated as `non-transport vehicles' and are exempted from being registered under the Central Motor Vehicles Rules, 1989. The contention, therefore, advanced is that imposition of such higher rate of tax on non-transport vehicles like mobile cranes which are essentially adapted for use on work sites, is irrational and discriminatory and therefore deserves to be struck down being violative of Article 14 of the Constitution of India.

30. On the second ground urged based on Article 14 of the Constitution of India, we have also heard Shri S.N.Shelat, Ld. Additional Advocate General for the State who has taken us through various decisions of the Supreme Court in support of his submissions that in the matter of selecting persons and things for imposing tax

at different rates, much flexibility and latitude has to be given to the legislature because it alone knows how best to collect the revenue on objects and from persons subjected to tax.

31. We have given our thoughtful consideration to the submissions made on behalf of the parties. We have also critically examined the decisions rendered from tim to time by the Supreme Court in the matter of Taxation Laws, particularly, on unequal burden of tax on different persons and objects. We find no merit in the objection taken on behalf of the crane owners to the imposition of higher rate of tax on them. We do not find the tax burden on cranes to be discriminatory under Article 14 of the Constitution of India.

32. As observed by the Supreme Court in the case of Kunnatha T Nair Vs. State of Kerala reported in AIR 1961 SC 552, that although taxing law is not wholly immune from attack on the ground that it infringes equality clause in Article 14 but the Courts are not concerned with the policy underlying the taxing statute. The Courts are also not concerned whether a particular tax could have been imposed in a different way which the Court might think more just and equitable. Merely because the total burden resulting from classification of objects and persons is unequal, such a classification cannot be held as discriminatory so long as there is a rational basis for such classification.

33. In V.Venugopal Ravi Varma Rajah Vs. Union of India reported in AIR 1969 SC 1094, it is observed:-

> "Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The Courts accordingly admit, subject to adherence to the funademental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways: the Legislature may select persons, properties, transactions and objects, and apply different methods and even rates for tax, if the Legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical classification: it is not a condition of the guarantee of equal protection that all transactions, properties, objects or

persons of the same genus must be affected by it or none at all. If the classification is rational, the Legislature is free to choose objects of taxation, imose different rates, exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment. A taxing statute may contravene Article 14 of the Constitution if it seeks to impose on the same class of property, persons, transactions, or occupations similarly situated, incidence of taxation, which leads to obvious inequality. A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects."

(para 14 - emphasis supplied)

34. In the context of Motor Vehicles Tax similar argument was considered and repelled by the Supreme Court in the case of Malva Bus Service Pvt.Ltd Vs. State of Punjab reported in AIR 1983 SC 634 by observing thus:-

"21. The next submission urged on behalf of the petitioners is based on Article 14 of the Constitution. It is contended by the petitioners that the Act by levying Rs.35,000/- as the annual tax on a motor vehicle used as a stage carriage but only Rs.1,500/- per year on a motor vehicle used as a goods carrier suffers from the vice of hostile discrimination and is, therefore, liable to be struck down. There is no dispute that even a fiscal legislation is subject to Art. 14 of the Constitution. But it is well settled that a legislature in order to tax some need not tax all. It can adopt a reasonable classification of persons and things in imposing tax liabilities. A law of taxation cannot be termed as being discriminatory because different rates of taxation are prescribed in respect of different items, provided it is possible to hold that the said items belong to distinct and separate grounds and there there is a reasonable nexus between the classification and the object to be

> achieved by the imposition of different rates of taxation. The mere fact that a tax falls more heavily on certain goods or persons may not result in its invalidity. As observed by this Court in Khandige Sham Bhat V. The Agricultural Income-tax Officer, (1963) 3 SCR 809; (AIR 1963 SC 591), in respect of taxation laws, the power of legislature to classify goods, things or persons are necessarily wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways. The Courts lean more readily in favour of upholding the constitutionality of a taxing law in view of the complexities involved in the social and economic life of the community. It is one of the duties of a modern legislature to utilise the measures of taxation introduced by it for the purpose of achieving maximum social goods and one has to trust the wisdom of the legislature in this regard. Unless the fiscal law in question is manifestly discriminatory the Court should refrain from striking it down on the ground of discrimination."

35. The next ground of challenge that needs consideration is whether the separate classification of heavy motor vehicles such as cranes, differently from trucks and buses is reasonable or not. It is true that mobile cranes are mainly used at work sites and only incidentally used on roads when they are carried from one work site to another. It cannot be denied that mobile cranes cause more wear & tear of the roads compared to other vehicles. Cranes are also owned by persons in trade or profession much different from those who own other heavy motor vehicles like trucks and buses. Imposition of higher rate of tax therefore on heavy vehicles mounted with cranes than buses and trucks cannot be held to have no nexus with the object of collecting tax for the purpose of construction, or maintenance of roads and regulating traffic.

36. The tax under the impugned Act of 1958, as described by the Supreme Court in various cases is of a compensatory and regulatory nature. It is not a `fee' so as to place burden on the legislature to establish quid-pro-quo. The imposition and collection of tax is to

generate revenue for construction and maintenance of roads as also to regulate traffic. In order to collect the tax, enough latitude or free hand has to be given to the Legislature to select & classify different types of vehicles and their owners eg. individuals or legal persons and tax them at different rates. Use of road, extent of wear & tear of the roads by their use, the paying capacity of different types of vehicle owners and many such other factors and circumstances are relevant for collecting tax to meet the total expenditure required for maintaining the roads and regulating the traffic. As observed in the judgment of Malva Bus Service (Supra), (the relevant part of which has already been quoted above.) - `the mere fact that the tax was more heavy on certain goods or persons may not result in its invalidity.'

37. In upholding the different rates of tax on stage carriages and public carriers, in Malva Bus Services Case (Supra), it was observed:

> "there are also other economic considerations which distinguish these carriages and public carriers from each other. The amount of wear & tear caused by any class of Motor Vehicles may not always be a determining factor in classifying motor vehicles for the purposes of tax."

38. The argument advanced that the mobile cranes being used only incidentally on the roads should not be subjected to such heavy tax compared to other vehicles, therefore, cannot be accepted. It is for the legislature to consider how best to augment revenue by subjecting persons and goods to taxation. Merely because the tax imposed on mobile cranes is much heavier compared to other motor vehicles, it cannot be held that there is no nexus between the levy of tax and the use of the road by the vehicle.

39. A mathematical precision in the mater of collection of tax from a particular vehicle based on its use of roads is not necessary for considering the validity of a tax law because the `tax' imposed is not a `fee' to require establishment of quid-pro-quo.

40. The next limb of the argument advanced on behalf of the crane owners is that cranes which are used exclusively at the work sites and never on the roads are also subjected to tax and there is no provision or machinery provided under the impugned Act to seek exemption from tax on such cranes. The above argument

ignores the relevant provisions of the Act and the Rules. A brief resume of the provisions of the Act and the Rules has already been made above. Under Section 3(2),a certificate in the prescribed form can be obtained from the Taxing Authority where a vehicle is neither used nor kept for use in the State in a particular quarter, month or year. Merely because there is no provision for complete exemption from tax on such mobile cranes which are used only at the work sites and never used on the roads, the taxing provision cannot be held to be unconstitutional or invalid. The Act imposes tax not only on motor vehicles actually used on the roads but also those which are kept for use on roads. In imposing different rates of tax and while collecting the same, it is well nigh impracticable for the Taxing Authority to keep a watch as to which mobile cranes are actually used on the road and which are kept for use off-roads or others which are although mobile and can be used on roads but are never used on roads.

41. The last argument advanced is that the burden of tax is so heavy that it is exproprietary and confiscatory in nature. Such heavy imposition of tax on mobile cranes at double the rates on vehicles used by legal persons other than individuals and at still higher rate on cranes manufactured outside India is such as to amount to serious inroad on the fundamental rights of the citizens to carry on trade and profession guaranteed under Article 19(1)(g) of the Constitution. To support the above argument alongwith the petition and rejoinder which are submitted on affidavit, a comparative chart has been filed to show that rate of tax imposed in the State of Gujarat is highest. Comparing thus the quantum of tax in states such as Haryana, Tamilnadu, Madhya Pradesh, Union Territories, Maharashtra and Rajasthan, it is pointed out that in no other state except Gujarat, tax at such heavy rate on mobile cranes with periodical increase based on laden weight and double the rate on cranes owned by legal persons other than individuals and 4 times on foreign manufactured cranes, has been levied. It is submitted that the tax burden is so unbearable that trade in cranes is no longer a economically viable business.

42. The provisions which entitle refund of tax for non-user of vehicles on roads have been dealt with in detail by Division Bench of this Court in Kaushikbhai K Patel Vs. State of Gujarat & Ors. reported in 1998 Vol.2 1093 although it was so done in a different context. The existing provisions do show that cranes which are actually at the work site and not intended to be used on roads can avail the provisions for claiming

refund of tax for non-user.

43. We have considered the above submissions and have also gone through the comparative figures of State wise tax burdens, placed before us. It is true that tax burden on cranes in State of Gujarat is very high compared to other states. We, however, do not find that the figures in tabular Form placed before us substantiate the stand that because of the heavy tax burden, the crane owners are likely to be thrown out of the trade or that the business in cranes has been rendered impossible or extremely unprofitable. Such a challenge to tax burden was not accepted in the case of Malva Bus Service Pvt.Ltd. (Supra), although certain observations were made in favour of tax payers. Similar observations can be made in this batch of petitions as well. It is open to the petitioners to approach the State Government with the facts and comparative figures to persuade the government or the legislature to reduce the tax burden or atleast to bring it at par with tax burden on mobile cranes as is to be found in other states.

42.A. The contention that the heavy burden of tax is confiscatory, exproprietory or is deprivation of fundamental right of trade under Article 19(1)(g) has to be rejected on the following observations of the Supreme Court in the case of Malva Bus Service Pvt.Ltd (Supra) at Page 642:-

"22. It was lastly urged that the levy is almost confiscatory in character and the petitioners would have to close down their business as stage carriage operators. It is stated that the passenger fares were permitted to be raised by about 43 per cent just before the levy was increased in this case and it is even now open to the operators to move the State Government to increase the rates if they feel that there is a case for doing so. But on the facts and in the circumstances of the case, we feel that it is not possible to hold that the impugned levy imposes an unreasonable restriction on the freedom of the petitioners to carry on business. The considerations similar to those which weighed with this Court in upholding the Mustard Oil Price Control Order, 1977, in Prag Ice & Oil Mills V. Union of India (1978) 3 SCR 293: (AIR 1978 SC 1296),

ought to be applied in this case also. Though patent injustice to the operators of stage carriages in fixing lower returns on the tickets issued to passengers should not be encouraged, a reasonable return on investment or a reasonable rate of profits can not be the sine qua non of the validity of the order of the Government fixing the maximum fares which the operators may collect from the passengers. It cannot also be said that merely because a business becomes uneconomical as a consequence of a new levy, the new levy would amount to an unreasonable restriction on the fundamental right to carry on the said business. It is however, open to the State Government to make any modifications in the fares if it feels that there is a need to do so. But the impugned levy cannot be struck down on the ground that the operation of stage carriages has become uneconomical after the introduction of the impugned levy. Moreover the material placed by the petitioners is not also sufficient to decide whether the business has really become uneconomical or not. We do not, therefore, find any merit in this ground also."

(Underlining to supply emphasis)

44. For the detailed discussion as above of various points urged before us, the challenge to the provisions of the Act of 1958 and the notifications issued thereunder fixing different rates of tax on mobile cranes fails. All the petitions are dismissed. Interim relief granted earlier in each petition is hereby vacated. In the circumstances, there shall be no orders as to costs. Rule discharged. As per the conditions imposed in the interim orders of stay and the undertakings given by the petitioners, they are directed to clear the different amounts of tax dues against them in respect of their different types of vehicles within a period of three months.

(D.M.Dharmadhikari, CJ)

(J.M.Panchal, J)

Learned Counsel appearing for the petitioners prays that interim relief granted be extended for a reasonable period of time to enable the petitioners to approach the Hon'ble Supreme Court. Since this is a matter regarding payment of tax, We have relied on the decisions of the Supreme Court in rejecting the petitions. We find no ground to grant any interim relief. Prayer rejected.

(D.M.Dharmadhikari, CJ)

(J.M.Panchal, J)

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